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RUEHDS/AMEMBASSY ADDIS ABABA PRIORITY 3334

RUEHBS/AMEMBASSY BRUSSELS PRIORITY 1429

RUEHLO/AMEMBASSY LONDON PRIORITY 0406

RUEHFR/AMEMBASSY PARIS PRIORITY 0318

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C O N F I D E N T I A L SECTION 01 OF 03 DAR ES SALAAM 000493

SIPDIS

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TREASURY OTA FOR D VAN KOCH

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TAGS: PREL PGOV KDEM PHUM EFIN ECON TZ

SUBJECT: TANZANIA: GRAND CORRUPTION CASES' SLOW, NOT SO STEADY PROGRESS

REF: A. 07 DAR ES SALAAM 0989

1B. 07 DAR ES SALAAM 1009

DAR ES SAL 00000493 001.2 OF 003

Classified By: Deputy Chief of Mission, Larry E. Andre  
for reasons, 1.5 (b,d)

SUMMARY

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11. (C) The Director of Tanzania's Prevention and Combating of Corruption Bureau (PCCB), Edward Hoseah, told our Millennium Challenge Threshold Account coordinator that the PCCB has been give the go-ahead to indict several GOT officials in the Alex Stewart Assayers case, one of six grand corruption cases the PCCB has investigated since October 2007. Four of these six cases have been forwarded to the Department of Public Prosecution,s (DPP) office which has to give consent before a prosecution can proceed. Hoseah also revealed that, while not required by law, the draft Alex Stewart case including the list of officials to be indicted was forwarded to President Jakaya Kikwete for his advice and informal consent.

(Note: For the list of grand corruption cases investigated to date by the PCCB, see Para. 11). End summary.

Promise to Donors Prosecute Grand Corruption Cases

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12. (SBU) The Millennium Challenge Account Threshold Program coordinator met with Edward Hoseah, the PCCB Director, for an update on the Government of Tanzania's (GOT) ongoing corruption case investigations. In October 2007, Hoseah had pledged to all of Tanzania's General Budget Support (GBS) donors that by October 2008, the investigations of at least five "grand corruption" cases would be completed and forwarded to the Department of Public Prosecution (DPP) for consent to prosecute. Director Hoseah defined a "grand corruption" case as one involving a large sum of money and/or well-known persons.

13. (SBU) According to the Prevention and Combating of Corruption Act of 2007, certain corruption offenses may be prosecuted by the PCCB, which has its own staff of prosecutors. Others have to be forwarded to the Department of Public Prosecution. However, when PCCB wishes to prosecute a particular corruption case, the law requires PCCB to submit the case file to the DPP for consent to prosecute. Under the Act, the DPP has 60 days in which to give or

withhold consent. Should consent be denied, the DPP may elect to carry out the prosecution itself, under its own constitutional prosecutorial authority.

Four of six cases forwarded to public prosecutor

¶4. (SBU) In October 2007, the PCCB Director General identified six grand corruption cases that the Bureau intended to investigate: Alex Stewart Assayers; Mwananchi Gold; Kiwira Coal Mine; Buzwagi Gold Mine; British Aerospace "radar deal"; and the Bank of Tanzania "Twin Towers" case. According to Hoseah, as of May 29, 2008, the PCCB had completed the investigations of four of these cases)-Alex Stewart Assayers; Mwananchi Gold; Kiwira Coal Mine; and Buzwagi Gold Mine)-and submitted the case files to the DPP for consent.

¶5. (SBU) Two months later, as of July 28, the PCCB had not completed any more cases to be forwarded to the Public Prosecutor. The DPP returned one case to Hoseah's office (Kiwira Coal Mine), and requested a more thorough investigation. In addition, the DPP gave consent for PCCB to prosecute the case of Alex Stewart Assayers. The remaining two cases were still awaiting a consent determination from the Department of Public Prosecution. In both these cases, DPP has already exceeded its 60-day window to give a response.

¶6. (SBU) During his meeting with Director Hoseah, our MCA Threshold Program coordinator learned that the PCCB has already prepared a draft indictment in the Alex Stewart Assayers case. Hoseah revealed that the indictment had been shared with President Kikwete; among those charged were several high-ranking and former high-ranking GOT officials.

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In a separate discussion between the UK's Department for International Development's (DFID) Senior Governance Advisor and the Millennium Challenge Corporation (MCC) Resident Country Director, DFID confirmed that the draft indictment is not required under the applicable legislation and that the PCCB was waiting the President's informal consent or advice.

¶7. (C) Hoseah appeared agitated when discussing the pending Alex Stewart indictment. He also expressed concern that the DPP had failed to provide a timely consent decision in two of the four cases. He suggested that this failure of the DPP to respond in a timely manner could indicate a lack of political will on the part of the Ministry of Justice and Constitutional Affairs to move against high-ranking individuals. (Note: The DPP reports to the Ministry of Justice, while the Prevention and Combating of Corruption Bureau is within the President's Office.) Hoseah referred to the PCCB as a "guinea pig" that is "alone and exposed" in its interest and determination to prosecute grand corruption cases.

Alex Stewart Indictment List on Close Hold

¶8. (C) Director Hoseah showed the Millennium Challenge Account Threshold Program coordinator in confidence a copy of the indictment in the Alex Stewart Assayers case. Three persons were charged. Of those, one is currently serving as Permanent Secretary of the Ministry of Finance, Grey S. Mgonja. Also, Daniel Yona, a former Minister of Energy and Minerals under President Benjamin Mkapa, was on the indictment list. (Note: Due to his position as Permanent Secretary at the Ministry of Finance, Grey Mgonja also chairs the eleven-member Governing Board of the Millennium Challenge Account Tanzania (MCA-T). MCA-T has the legal responsibility on behalf of the GOT to implement Tanzania's USD 698 million MCC Compact. End note.)

Comment

¶9. (C) In addition to the questions Hoseah raised about the

amount of political will that exists to vigorously combat corruption, we are also concerned about the potential lack of capacity on the part of the PCCB and/or the DPP to successfully prosecute such cases through to conviction. Such concerns also are shared by DFID and some other donors.

**¶10. (C)** As noted by DFID, the potential high-level defendants in these cases are quite likely to have "access to significant off-budget disposable income" that could assist them in successfully defending themselves against a PCCB or DPP legal team that has virtually no experience in pursuing such sometimes complex, often difficult-to-prove cases. It is therefore possible that part of the PCCB or DPP's hesitation to move forward may represent a simple lack of confidence in success rather than an absence of political will and support.

#### Case Notes

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**¶11. (SBU)** The six cases of grand corruption that PCCB has investigated as of July 2008 include:

##### Alex Stewart:

Alex Stewart is a gold mining auditing company that receives a large portion of gold royalties paid to the GOT. The company was hired by the Bank of Tanzania (BOT) and is suspected of receiving dubious payments from the BOT.

##### BOT "Twin Towers" Buildings:

A suspect major price escalation of this Bank of Tanzania project indicated losses estimated at USD 265 million.

##### Mwananchi Gold:

The 2005/2006 report by Tanzania's Controller and Auditor General cites dubious payments by the Bank of Tanzania to this company including loans made to the company amounting to USD 5.5 million.

##### Kiwira Coal Mine:

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The controlling interest in the Kiwira mine was held by Tanpower Resources, a company formed by Benjamin Mkapa and Daniel Yona (Minister for Energy and Minerals in Mkapa's government). Tanpower Resources acquired the mine on extremely favorable terms and has entered into agreements with TANESCO. The mine was constructed with public funds.

##### Buzwagi Gold Mine:

Barrick Gold received a GOT contract to develop this mine but the contract was signed in London under suspicious circumstances by former Energy and Minerals Minister Nazir Karamagi (who resigned in February due to his possible implications in the "Richmond deal" scandal).

##### BAE "radar deal":

The British defense firm, BAE Systems, allegedly paid a middleman a commission of USD 12 million to win a contract to install an air traffic control system in Tanzania. The deal was brokered by Sailesh Pragji Vithlani, who was born in Mwanza, Tanzania, but is now a British citizen; he is currently being tried in absentia in a Dar es Salaam court for making false statements to a PCCB officer.

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